



RE: Illinois CAFO program report

Julianne Socha to: Sofat, Sanjay

Cc: Stephen Jann

11/06/2012 09:45 AM

Sanjay,

The NPDES Programs Branch and Office of Regional Counsel have reviewed the two issues raised by the Ag Coalition in #4 of their 9-25-12 Motion Proposing Changes to the Proposed Rule. EPA recommends that IEPA oppose both changes with one minor exception in the first issue.

The first issue proposes adding a new section to IL's rules that specifically states "No NPDES CAFO permit shall be required for any facility which is not discharging or has not yet received livestock". The current proposed ruled language of section 502.101(b) already addresses this issue. 502.101(b) requires that an o/o of a CAFO must seek permit coverage **if the CAFO discharges** and provides that past discharges from a CAFO do not trigger a duty to apply if the conditions that led to the discharge have been corrected and actions have been taken to prevent discharges from occurring in the future. The Ag Coalition provides the example of requiring a permit as a condition of settlement. 502.102(b)(1) provides opportunity for an o/o to remedy the discharge. The enforcement agency can consider the status of the remedy in determining appropriate enforcement relief. The second part of this issue is requiring permits before livestock are present at the facility. 502.101(f) requires the o/o of a new CAFO that will discharge to apply for NPDES permit coverage at least 180 days prior to commencing operation. These 180 days could include time when livestock is not present at the facility. Since a CAFO must be covered by a permit at the time that it discharges which may not be at the time it commences operation, IEPA could respond to the IPCB by suggesting that 502.101(f) be revised to require the o/o to apply for a permit 180 days prior to a discharge. This language would be consistent with EPA's language at 122.23(f) *"By when must the owner or operator of a CAFO have an NPDES permit if it discharges?"* A CAFO must be covered by a permit at the time that it discharges." and 122.21(c) *"Time to apply."* (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence ...".

The second issue raised by the Ag Coalition requests that the rule provide that a decision to designate an AFO as a CAFO (502.106 Case-By-Case Designation Requiring NPDES Permits) is an agency action that is subject to Board proceedings. Illinois Environmental Protection Act provides for Board review of final Agency determinations on permit applications and other final determinations by the Agency. The federal rules do not contemplate designation of an AFO as a CAFO to be a final agency action subject to appeal. Rather, the federal rules specifically provide that consideration of whether the designation decision was proper will remain open during public comment of the draft permit. See 40 CFR 124.52. Federal rules require that the Agency notify the discharger and provide an application form. 40 CFR 124.11 requires that the Agency consider all public comments in making the final decision. The proposed change, as suggested by the Ag Coalition, to make a designation decision a final action subject to review by the IPCB is inconsistent with federal rules.

If you have any additional questions please let me know.
julianne

Julianne Socha
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"Sofat, Sanjay"

Julianne and Steve, Once again thanks for your...

11/02/2012 11:53:58 AM

From: "Sofat, Sanjay" <Sanjay.Sofat@Illinois.gov>

To: Julianne Socha/R5/USEPA/US@EPA, Stephen Jann/R5/USEPA/US@EPA,
Date: 11/02/2012 11:53 AM
Subject: RE: Illinois CAFO program report

Julianne and Steve,

Once again thanks for your help with the frozen ground issue. So that you know we are filing our response to Board's questions on November 7th. If you have any position/comments on "appeal rights" issue(item 4 of the Producers' filing), please let us know before 11.07.2012. Once again thanks for your help.

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From: Socha.Julianne@epamail.epa.gov [mailto:Socha.Julianne@epamail.epa.gov]
Sent: Thursday, November 01, 2012 3:33 PM
To: Sofat, Sanjay
Subject: Fw: Illinois CAFO program report

Sanjay,
In follow up to the information I sent you on 10-26-12 and your discussions on 10-29 with Steve Jann I'm forwarding some additional information regarding runoff from frozen ground.
julianne

1.) I looked through documents Steve Jann has relating to Wisconsin's CAFO rule, although I have not found data specific to your question there is some general discussions regarding positive benefits associated with restrictions for winter land application. I've provided links to electronic copies and noted the sections discussing winter land application that may offer some general support for Illinois EPA's definition.

<http://dnr.wi.gov/topic/AgBusiness/documents/AdoptionNR243EA.pdf>

see Section VII.A, C.1., and 5

<http://dnr.wi.gov/topic/AgBusiness/documents/AdoptionResponseComments.pdf>

see comment & response to comment for comment numbers 33-35, 85, 88, 89, 90, 93, 97 and 125

2.) http://publications.usace.army.mil/publications/eng-manuals/EM_1110-2-1406_sec/toc.htm
ACOE Engineering Manuals

Publication Number: EM 1110-2-1406
Title: Engineering and Design - Runoff from Snowmelt
Proponent: CECW-EH
Publication Date: 31 March 1998
see chapters 2 and 7

3.) another article that Steve Jann has noted as a possible source is Granger, R.J., Gray, D.M., and Dyck, G.E. 1984. *Snowmelt infiltration to frozen prairie soils*, Can. J. Earth Sci. 21:699-677
this is the abstract for the article, I have not been able to obtain a copy of the full journal article
<http://www.nrcresearchpress.com/doi/abs/10.1139/e84-073>

4.) the attached file is an excerpt from Region 5's response to peer review comments on the draft Winter Spreading Technical guidance that Steve wrote and is included in the NPDES Permit Writers' Manual for CAFOs as Appendix G. This excerpt includes references that Illinois EPA may find useful. see the second full paragraph on the first page and References on pages 3 and 4 of the attached file.

(See attached file: excerpt R5 response to peer review comments on draft winter spreading guidance.pdf)

Both 5.) and 6.) below are documents that Steve Jann recommended

5.) Srinivasan, M.S., Bryant, R.B., Callahan, M.P., Weld, J.L. 2006. *Manure Management and nutrient loss under winter conditions: A literature review*, Journal of Soil and Water Conservation 61/4: 200-209

(See attached file: manure management and nutrient loss under winter conditions a literature review 2006.pdf)

6.) http://vermont4evolution.files.wordpress.com/2011/12/ulm-elc_coldclimates.pdf
Stormwater BMP Design Supplement for Cold Climates, December 1997

7.) Ohio EPA conducted runoff studies in the early to mid-2000's, mostly related to thaw conditions. The data I've seen includes significant information on pollutants in runoff and ambient water quality data from nearby streams showing increased concentrations of pollutants after manure application. I did not see any data specific to depth of frozen ground however, you may want to contact Ohio EPA to see if this data is available. Rick Wilson and Cathy Alexander at Ohio EPA were the contacts for these projects. The attached summary report provides some summary data from the Ohio studies. See pages 2-6

(See attached file: Effect of Manure land application on surface water quality in region 5 september 2005.pdf)

----- Forwarded by Julianne Socha/R5/USEPA/US on 11/01/2012 11:36 AM -----

From: Julianne Socha/R5/USEPA/US
To: "Sofat, Sanjay" <Sanjay.Sofat@Illinois.gov>,
Date: 10/26/2012 11:14 AM
Subject: RE: Illinois CAFO program report

Hi Sanjay,

Here's what I've been able to find so far. According to WDNR, Wisconsin NR 243 definition of frozen ground was both a practical consideration and one based on risk associated with a temporary frozen soil condition , typically associated with an overnight frost. The technical advisory committee working on the revisions to NR 243 decided that a ½ inch was deemed to be a low-risk condition, whereby spreading equipment could get out on land and minimize soil compaction (a good thing) while the application of the manure and/or warming daytime temperatures would rapidly remove the frozen condition and minimize the potential for runoff . Beyond the ½ inch, the frozen condition was believed to be more permanent and couldn't be rapidly dissipated , or was indicative of more permanent frozen conditions.

UW-Discovery Farms' work regarding concrete frost also provides support for a higher risk of runoff associated with frozen conditions at lesser soil depths from the surface. Here's a link to UW-Discovery Farms.

<http://fyi.uwex.edu/discoveryfarms/2012/01/concrete-frost-formation-and-implications/>

Illinois EPA may want to contact Tom Bauman at WDNR or Discovery Farms directly to find out if they have available data that could be shared with Illinois EPA.

If I find any additional information I'll forward it to you.

julianne

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▼ "Sofat, Sanjay" ---10/19/2012 03:03:44 PM---Julianne- I was wondering if you could help me with this issue. Do you have access to data/research

From: "Sofat, Sanjay" <Sanjay.Sofat@Illinois.gov>
To: Julianne Socha/R5/USEPA/US@EPA,
Date: 10/19/2012 03:03 PM
Subject: RE: Illinois CAFO program report

Julianne- I was wondering if you could help me with this issue. Do you have access to data/research that would show that runoff potential from ½ inch frozen ground would be far less than 2 inches of frozen ground? Thanks,

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From: Socha.Julianne@epamail.epa.gov [<mailto:Socha.Julianne@epamail.epa.gov>]

Sent: Friday, October 19, 2012 12:44 PM

To: Willhite, Marcia

Cc: Sofat, Sanjay

Subject: Re: Illinois CAFO program report

yes, there will still be a progress report and a public informational meeting however, it is no longer being planned to coincide with the public hearing on the NPDES permit for surface discharging private sewage disposal systems.

As soon as details regarding the public informational meeting are available I will share them with you.

▼ "Willhite, Marcia" ---10/19/2012 12:39:43 PM---There was mention over the past year of doing a public meeting on the Illinois CAFO program to coincide

From: "Willhite, Marcia" <Marcia.Willhite@Illinois.gov>

To: Julianne Socha/R5/USEPA/US@EPA,

Cc: "Sofat, Sanjay" <Sanjay.Sofat@Illinois.gov>

Date: 10/19/2012 12:39 PM

Subject: Illinois CAFO program report

There was mention over the past year of doing a public meeting on the Illinois CAFO program to coincide with the public hearing on the NPDES permit for surface discharging private sewage disposal systems (scheduled for Nov. 1). Is that still the plan?

Marcia Willhite

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